CLERK'S COPY.

AGREED RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 230 63, 11

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, PETITIONER,

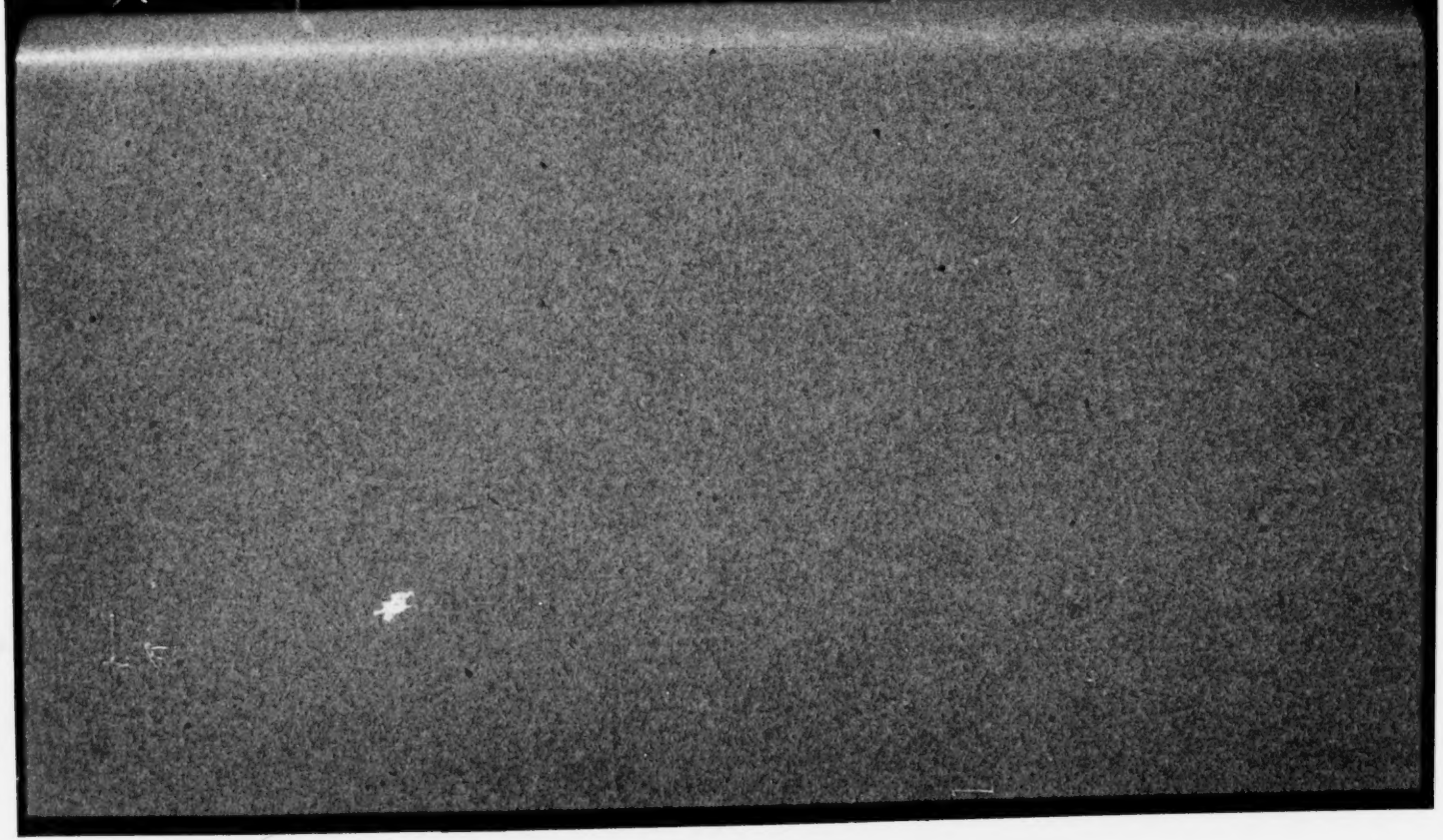
vs.

C. H. BOSWORTH, RECEIVER OF THE CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY, AND THE CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 28, 1898.
CERTIORARI AND RETURN FILED MAY 26, 1898.

(16,856.)



(16,856.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 283.

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, PETITIONER,

vs.

C. H. BOSWORTH, RECEIVER OF THE CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY, AND THE CHICAGO, PEORIA AND ST. LOUIS RAILWAY COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 15, 1898.

a *Transcript of Record.*

In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1896.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY ET AL. } No. 442.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

C. H. BOSWORTH, Receiver, etc., Appellant,
vs.
THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellee.

Appeal from the circuit court of the United States for the southern district of Illinois.

Mr. Bluford Wilson, Mr. Philip B. Warren, counsel for appellant; Mr. George R. Peck, Mr. Berton Hanson, Mr. George P. Carey, counsel for appellee.

Transcript of record filed August 20, 1897.
Printed record filed Sep. 4, 1897.

OLIVER T. MORTON, *Clerk.*

b-22 In the Circuit Court of the United States for the Southern District of Illinois. In Chancery.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.* } Consolidated Cause.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

* * * * * * *

23 Afterwards, to wit, on the twenty-ninth day of January, in the year of our Lord one thousand eight hundred and ninety-five, came the Chicago, Milwaukee & St. Paul Railway Company, by its solicitors, and filed in the clerk's office of said court its intervening petition, which is as follows, to wit:

Intervening Petition of the C., M. & St. P. R. Co.

In the Circuit Court of the United States in and for the Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK, Complainant, vs. THE CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY, Defendant. } Consolidated Cause.

Intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

To the honorable the judges of said court:

Comes now your petitioner, The Chicago, Milwaukee & St. Paul Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of Wisconsin, having its principal office at the city of Milwaukee, and being a citizen of the said State of Wisconsin, intervening herein, and by leave of court first had and obtained, files this its petition, and complaining of the Chicago, Peoria & St. Louis Railway Company, a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and having its principal office and place of business at Springfield, therein states:

24 That your petitioner, as such corporation, owns and operates, about six thousand miles of railroad in the States of Wisconsin, Michigan, Minnesota, North and South Dakota, Illinois, Iowa, and Missouri, and as such was at the dates and times hereinafter mentioned a common carrier of persons and property, and was the owner of the cars hereinafter mentioned. That the defendant Chicago, Peoria, & St. Louis Railway Company, at the times and dates hereinafter mentioned, owned and operated a line of road from the city of Chicago by way of Peoria to East St. Louis in the State of Illinois, and was also a common carrier of persons and property. That the defendant as such common carrier, on the 28th day of October, 1894, had in its possession at said East St. Louis 38 freight cars of your petitioner, and that while said 38 freight cars were in the possession of said defendant railway company at its East St. Louis station, and while said defendant held said 38 cars as a common carrier thereof, and while the same were still in transit, and on their way to destination, and in possession of and under the control of the said defendant railway company, the same were destroyed by fire on the evening of said 28th day of October, 1894. That said 38 cars so destroyed were of the value of seventy-five hundred (7,500) dollars, and on account of the loss, damage, and destruction thereof by fire as aforesaid, your petitioner has suffered damage to that amount.

The following is a statement showing the initials, numbers, value, depreciation, salvage and net loss of each one of said 38 cars.

Statement of cars burned at East St. Louis, Ills., during the night of October 28th, 1894, showing the value of each car, less depreciation for age the salvage and the net loss sustained on each car.

Initials.	Numbers.	Value.	Depreciation.	Salvage.	Net loss.
C., M. & St. P.	3218	$440	$264.00	$60.62	$115.38
"	3524	440	264.00	63.25	112.75
"	4126	440	264.00	60.62	115.38
"	6364	440	264.00	63.25	112.75
"	3728	440	264.00	63.25	112.75
"	6842	440	264.00	63.25	112.75
M. & N. R. R. Co.	1154	500	155.06	69.98	274.96
"	1232	500	155.06	69.98	274.96
C., M. & St. P.	37506	475	158.78	69.98	246.24
"	1100	440	264.00	63.25	112.75
"	2430	440	264.00	60.62	115.38
"	2598	440	264.00	63.25	112.75
"	680	440	264.00	63.25	112.75
"	12	440	264 00	63.25	112.75
25 "	10536	440	259.60	60.62	119.78
"	10720	440	259.60	60.62	119.78
"	10071	440	261.45	60.62	117.93
"	11836	440	255.90	63.25	120.85
"	12886	440	254.97	63.25	121.78
"	12336	440	257.75	60.62	121.63
"	15944	475	274.19	69.98	130.83
"	16502	440	253.99	63.25	122.76
"	17272	475	266.74	69.98	138.28
"	18126	475	266.74	69.98	138.28
"	20022	515	268.86	69.98	176.16
"	31098	475	236.90	69.98	168.12
"	31204	515	235.75	69.98	209.32
"	32194	475	234.50	69.98	170.52
"	32986	475	234.50	69.98	170.52
"	33090	475	195.58	69.98	209.44
"	33134	475	195.58	69.98	209.44
"	34908	475	292.69	69.98	212.33
"	34574	475	194.14	69.98	210.88
"	38108	475	252.32	69.98	192.70
"	43080	500	109.63	85.73	344.64
"	43222	500	109.63	85.73	344.64
"	46064	500	105.47	85.73	348.80
"	46992	500	90.94	85.73	363.33

Your petitioner further shows that on the 21st day of September, 1893, in the suit of The Mercantile Trust Company of New York, complainant, against The Chicago, Peoria and St. Louis Railway Company, defendant, in the circuit court of the United States, for the southern district of Illinois, Mr. C. H. Bosworth was, by an order duly entered therein, appointed the receiver of, and placed in charge of the property, rights and franchises of said defendant railway company, and as such receiver, has, ever since the date of his appointment been engaged in managing and operating the railroad of said defendant railway company in the transportation of persons and property over and upon the same, and that the liability of such railway company to your petitioner was incurred while its railroad was being operated by said receiver, and that the claim and demand

of your petitioner herein is of a kind, and accrued within the time which entitled it to a priority over debts and demands secured by mortgages, and to a payment by said receiver out of any funds which may come into his hands while operating the railroad of said defendant railway company.

26-58 Wherefore your petitioner prays that its said claim of seventy-five hundred ($7,500) dollars may be allowed against the said receiver appointed as aforesaid; that said claim be declared a lien paramount to all other claims against the property of said Chicago, Peoria & St. Louis Railway Company, prior in right to the claims of mortgages, and a lien upon any money in the hands of said receiver, not otherwise appropriated, and that the said receiver be ordered to pay the said amount out of any moneys that may come into his hands, or out of the proceeds of the sale of the property of the said railway company, and before any distribution shall be made of the same, and for such other and further orders and decrees as to the court shall seem meet and proper.

THE CHICAGO MILWAUKEE & ST. PAUL RAILWAY COMPANY,
By ROSWELL MILLER, *Its President.*

BURTON HANSON &
GEORGE P. CARY, *Of Counsel.*

Affidavit of Roswell Miller.

UNITED STATES OF AMERICA, *Northern District of Illinois,* } ss:

Roswell Miller, being duly sworn, deposes and says that he is president of The Chicago, Milwaukee & St. Paul Railway Company, the intervenor herein; that he has read the foregoing petition and knows the contents thereof, and that the same is true as he verily believes.

ROSWELL MILLER.

Subscribed and sworn to before me this 26th day of January, 1895.

[SEAL.] W. D. MILLARD,
Notary Public.

(Indorsed:) Filed January 29th, 1895. James T. Jones, clerk.

* * * * * * *

59 Afterwards, to wit, on the 10th day of April in the year of our Lord one thousand eight hundred and ninety-six, came Stuart Brown, Esq., one of the masters of this court, and filed in the clerk's office of said court his report, on said intervening petition, which report is as follows, to wit:

Report of Master in Chancery. Filed April 10, 1896.

In the Circuit Court of the United States for the Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS. } Consolidated Cause.

Intervening petition of Chicago, Milwaukee & St. Paul Railway Company.

Your subscriber, one of the masters in chancery of this honorable court, to whom the said intervention in the above-styled cause
60 has been referred, would respectfully report that he has taken evidence, heard oral argument and had briefs presented upon the questions raised by the proof, and herewith he offers his conclusions.

The pleadings are the same in effect as were set out in the report of your subscriber on claim of T. McMichael & Son filed April 8th, 1896, and to which reference is hereby made. The difference is shown in the amended stipulation as to proof, which in this intervention was as follows:

"That the Chicago, Milwaukee & St. Paul Railway Company is a corporation, as alleged, having its principal office at the city of Milwaukee, Wisconsin; that on the 28th day of October, 1894, it was the owner of thirty-eight (38) cars mentioned and described in its petition on file herein; that during the evening of said 28th day of October, the said cars while on the tracks of the Terminal Railroad Association of St. Louis in its yard at East St. Louis, commonly used by the receiver herein, under the agreement between said association and the Chicago, Peoria & St. Louis Railway Company dated August 1, 1892, were damaged by fire at East St. Louis, in the State of Illinois; that each one of said cars was consigned as per bill of lading and waybills introduced in evidence; that the amount of damage to each of said cars except car No. 12, is as stated in the petition of said company under the heading 'Net loss & salvage,' and that the total amount of damage to said cars is $9,033.73, which amount the Chicago, Milwaukee & St. Paul Railway Company is entitled to recover, if it shall be adjudged that it is entitled to recover in this proceeding."

The owners of the cars destroyed in the fire of October 28, 1894, have the same claim against the C., P. & St. L. railway on the Terminal Association that the owners of their contents had. *P. & P. U. R'y v. C., R. I. & P. R'y*, 109 Ill., 135; 25 Fed. Rep., 317.

The only question then remaining in this intervention is: Were they delivered to Terminal railroad as a common carrier, or were they held by the C., P. & St. L. as a common carrier?

The evidence as to their delivery was the same as that in T. McMichael intervention, and my conclusions are the same for the reasons stated in that report.

I reach, therefore, the opinion that the intervenor has a just claim against the receiver in the sum of $9,033.73, and interest thereon at the rate of five per cent. per annum from date of loss to present date, and that it should be paid as the court may direct.

All of which is respectfully reported this 7th day of April, 1896.

STUART BROWN, *M. C.*

(Indorsed:) Filed April 10, 1896. James T. Jones, clerk.

61 Then afterwards, to wit: on the 27th day of April, in the year last aforesaid, came C. H. Bosworth, the receiver herein, and filed in the clerk's office of said court his exceptions to said report of said master on said intervening petition, which exceptions are as follows, to wit:

Exceptions of Receiver to Report of Master.

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA AND ST. LOUIS RAILWAY Company. } Consolidated Cause.

In the matter of the intervening petition of the Chicago, Milwaukee and St. Paul Railway Company.

Exceptions of the Receiver to the Master's Report.

Now comes C. H. Bosworth, receiver herein, and excepts to the report of Stuart Brown, master in chancery, filed in the above-entitled matter on the 10th day of April, 1896, and for cause of exception, shows:

First. For that the said master has failed and refused to report that the destination of the cars of intervenor, as shown by the evidence, was East St. Louis, Illinois.

Second. For that the said master has failed and refused to report his conclusions as to whether or not the cars of intervenor, at the time they were destroyed, were being held by the Terminal Railroad Association of St. Louis or the receiver herein as a common carrier or a warehouseman; whereas, the said master should have reported that said cars, at the time of their loss, were in the custody and under the complete control of the Terminal Railroad Association of St. Louis as a warehouseman.

Third. For that the said master has failed and refused to report his conclusions as to the effects of the contract of carriage entered into by said intervenor, containing clauses exempting it from loss by fire; whereas said master should have reported that it appeared from the evidence that said intervenor entered into certain contracts of carriage, containing a clause exempting itself as a carrier,

from liability by fire, and that the benefit of said contract inured to each of the connecting carriers, including the receiver.

Fourth. For that the said master has failed and refused to
62 report that the cars in question, at the time of their damage and destruction, had been delivered by the receiver to the Terminal Railroad Association of St. Louis in the due course of business, and were then in the custody of, and under the complete control of said Terminal Railroad Association of St. Louis.

Fifth. For that the said master has reported that the intervenor has a just claim against the receiver in the sum of $9,033.73, and interest thereon at the rate of 5 % per annum, from date of loss to April 7, 1896, and that it should be paid as the court may direct; whereas, the said master should have reported that said intervenor was not entitled to recover from the receiver for the loss and damage occurring to said cars by reason of said fire.

And thereupon this receiver prays that the said master's report may be annulled and set aside, and that a decree may be entered on said intervening petition, dismissing the same at petitioner's cost.

C. H. BOSWORTH, *Receiver,*
By BLUFORD WILSON &
P. B. WARREN,
His Solicitors.

(Indorsed:) Filed April 27, 1896. James T. Jones, clerk.

* * * * * * *

63 Afterwards, to wit: on the 5th day of April, in the year last aforesaid, the following further proceedings were had in said court in said cause and entered of record, to wit:

Decree, April 5, 1897.

In the Circuit Court of the United States for Southern District of Illinois.

THE MERCANTILE TRUST COMPANY OF NEW YORK, Complainant, *vs.* CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.*, Defendants.	In Equity. Consolidated Cause.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

And now on the 5th day of April, A. D. 1897, came again the said intervenor, The Chicago, Milwaukee & St. Paul Railway Company, by Burton Hanson and George P. Cary, its counsel, and the said Mercantile Trust Company of New York, by Bluford Wilson, its counsel, and also C. H. Bosworth, receiver herein, by Bluford Wilson and P. B. Warren, his counsel, and this cause coming on to be fur-

ther heard upon the exceptions of the said C. H. Bosworth, receiver, to the report of the master in chancery herein, and the court having heard argument of counsel, and being sufficiently advised, doth order and adjudge and decree that said exceptions be and they are hereby overruled, and the report of said master is in all things confirmed.

It is further ordered, adjudged and decreed by the court, that said C. H. Bosworth, receiver, pay as a part of the expenses of his receivership within ninety days from the entry of this decree, the said sum found to be due to said intervenor, Chicago, Milwaukee & St. Paul Railway Company, to wit: the sum of nine thousand, thirty-three and $\frac{73}{100}$ dollars ($9,033.73), with interest thereon at the rate of five (5%) per cent. per annum from the 10th day of April, 1896, the date of the filing of the master's report, to the entry of this decree, making a total of principal and interest in the sum of nine thousand, four hundred and eighty-four dollars and seventy-three cents, and costs, inclusive of clerk's fees, amounting to sixteen dollars and no cents, making a total of principal, interest and costs of nine thousand, five hundred dollars and seventy-three cents ($9,500.73).

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It is further ordered, adjudged and decreed that inasmuch as the aforesaid amount is properly chargeable to the expenses of the receivership of C. H. Bosworth herein, this decree for the payment of said amount to said intervenor, Chicago, Milwaukee & St. Paul Railway Company, be, and the same hereby is, adjudged to be a lien upon all the property and income of said defendant, Chicago, Peoria & St. Louis Railway Company, as it existed and was known during said receivership, in favor of the intervenor, Chicago, Milwaukee & St. Paul Railway Company, and upon all of the property and income of the purchaser or purchasers, purchased at the foreclosure sale heretofore had, their successors or assigns.

It is further ordered, adjudged and decreed that said lien be, and the same is hereby adjudged to be a lien upon all the property and income of said defendant, Chicago, Peoria & St. Louis Railway Company, its said purchaser or purchasers, their successors or assigns, prior and superior to the lien of the mortgage given by said defendant railway company to the Mercantile Trust Company of New York, and to any and all mortgages that may have been placed upon said property by said defendant, or said purchaser or purchasers, their successors or assigns, or which may hereafter be placed upon said property.

And the court having in the original decree and confirmation of sale thereunder specially reserved the right of caption of the property of said Chicago, Peoria & St. Louis Railway Company to enforce the payment of the sum or sums that might be decreed to be liens on said property, it is further ordered, adjudged and decreed that if said amount herein adjudged and decreed to be paid to said intervenor, Chicago, Milwaukee & St. Paul Railway Company, is not paid within the time herein limited, that said C. H. Bosworth, as receiver, is hereby directed to take possession of all said railroad property, together with its income, rolling stock and real estate, and

operate the same, and out of the net earnings pay the amount due on this decree to the Chicago, Milwaukee & St. Paul Railway Company.

* * * * * * *

347 *Petition of Receiver for Appeal, April 5, 1897.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY. } Consolidated Cause.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

Petition for Appeal.

The petition of C. H. Bosworth, receiver herein, showeth unto your honor that a final decree was entered in the above-entitled cause on the 5th day of April, 1897, whereby it was ordered, adjudged and decreed that your petitioner should pay to the said Chicago, Milwaukee & St. Paul Railway Company the sum of $9,033.73; your petitioner further states to your honor that he has assigned errors upon the record in said cause, specifying errors, as he alleges, in the record and decree aforesaid. He therefore prays that your honor will grant an appeal from the said judgment and decree to your petitioner, upon condition that he enters into bond in the sum of five hundred dollars, with surety to be approved by this honorable court, in such time as your honor shall order and decree.

C. H. BOSWORTH, *Receiver*,
By BLUFORD WILSON,
PHILIP BARTON WARREN,
His Solicitors.

348 *Assignment of Errors by Receiver.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY. } Consolidated Cause.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

Assignment of Errors.

And now comes C. H. Bosworth, receiver herein, by Bluford Wilson and P. B. Warren, his solicitors, and says there is manifest error in the record and proceedings in the above-entitled judgment and decree; and specifies the following, to wit:

1. The court erred in overruling the exceptions filed by the receiver to the report of the master.

2. The court erred in failing and refusing to sustain the exceptions filed by the receiver to the report of the master.

3. The court erred in ordering and adjudging that the petitioner was entitled to a valid and first lien on the property of the defendant railway company ahead of the mortgage indebtedness, and upon all of the property and income of the purchasers, purchased at the foreclosure sale of said railway property.

4. The court erred in failing and refusing to order, adjudge and decree that the claim of the intervenor was not entitled to a valid and first lien on the property of the defendant railway company, ahead of the mortgage indebtedness, and upon all of the property and income of the purchasers, purchased at the foreclosure sale of said railway property.

4. The court erred in ordering, adjudging and decreeing that said receiver pay to the intervening petitioner the sum of $9,033.73 with interest thereon from the date of the filing of the master's report, together with the costs in this case.

6. The court erred in ordering, adjudging and decreeing that if said amount was not paid by the receiver within the time there limited, the said receiver be directed to take possession of all of said property and operate the same, and out of the net earnings, pay said amount.

Whereby, the plaintiff in error prays that said judgment and decree be reversed and annulled, with directions to the lower court to dismiss said intervening petition.

BLUFORD WILSON,
PHILIP BARTON WARREN,
Solicitors for C. H. Bosworth, Receiver.

349 *Bond on Appeal by C. H. Bosworth, Receiver.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY Company. } Consolidated Cause.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

Bond.

Know all men by these presents, that we, C. H. Bosworth, as receiver of the Chicago, Peoria & St. Louis Railway Company as principal, and Bluford Wilson as surety, are held and firmly bound unto the Chicago, Milwaukee and St. Paul Railway Company in the penal sum of five hundred dollars, for the payment of which, well and truly to be made, the said receiver, as such, binds himself and

his successor, and the said surety binds himself, his heirs and personal representatives, jointly and severally, by these presents.

Dated this 31st day of May, 1897.

The condition of this obligation is such that whereas, on the 5th day of April, 1897, in the circuit court of the United States, for the southern district of Illinois, in the above-entitled cause, it was ordered, adjudged and decreed by the court that the above-bounden C. H. Bosworth, as receiver, should pay over to the said Chicago, Milwaukee & St. Paul Railway Company the sum of $9,033.73 and from which decree the said receiver has appealed to the United States circuit court of appeals for the seventh circuit, and upon the condition that the receiver should enter into bond in the sum of five hundred dollars with surety to be approved by the court:

Now, therefore, if the said receiver shall well and truly, without delay, prosecute the said appeal with effect, and shall pay all costs and damages that may be adjudged against him, by reason of said appeal, and all costs that may accrue therein in case of dismissal of said appeal by appellant, then this obligation to be null and void, otherwise to remain in full force and effect.

C. H. BOSWORTH,
As Receiver of the Chicago, Peoria & St. Louis Railway Company. [SEAL.]
BLUFORD WILSON. [SEAL.]

Approved:
WILLIAM J. ALLEN,
United States District Judge.

350 *Order Allowing C. H. Bosworth, Receiver, an Appeal and Approving Bond.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY *vs.* CHICAGO, PEORIA & ST. LOUIS RAILWAY Company.	Consolidated Cause.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

Order Allowing Appeal and Approving Bond.

Now on this first day of June, 1897, the same being one of the days of the January term, A. D. 1897, of this court, comes C. H. Bosworth, receiver herein, and files his petition for appeal from the order and decree of the court entered herein on the 5th day of April, 1897; and it appearing to the court that said petition is in due form, it is hereby—

Ordered, adjudged and decreed that the prayer of said petition be, and the same is hereby granted; that the appeal be, and the same is hereby allowed to said C. H. Bosworth, receiver, from the said

order and decree of April 5th, 1897, to the United States circuit court of appeals for the seventh circuit, upon the said C. H. Bosworth, as such receiver, entering into bond in the sum of five hundred dollars, with surety to be approved by this court; which bond it appears to the court is herewith submitted and approved.

Petition of the C., P. & St. L. R'y Co.

In the Circuit Court of the United States, Southern District of Illinois.

MERCANTILE TRUST COMPANY ET AL.
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY Company *et al.* } Consolidated Cause.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

Application of the Chicago, Peoria & St. Louis Railroad Company of Illinois to be Made Party Defendant and for Leave to Appeal.

Now comes the Chicago, Peoria & St. Louis Railroad Company of Illinois, and shows to this honorable court that on the 10th
351 day of July, 1895, a decree was entered in the original foreclosure cause pending in this court, in which The Mercantile Trust Company *et al.* were complainants, and The Chicago, Peoria & St. Louis Railway Company *et al.* were defendants, for the foreclosure and sale of all the property of said defendant railway company; that in and by said decree it was provided, among other things, that the purchasers of said property and their assigns might be made parties to all intervening petitions filed in such original cause, and might also appeal from any decree that might be entered in this court upon said intervening petitions; that on the 21st day of September, 1895, pursuant to said decree of foreclosure and sale, Stuart Brown, Esq., as master commissioner, sold said property to a reorganizing committee, and pursuant to a decree of this court entered herein on the 1st day of February, 1896, executed a deed to said property to the assignees of said reorganization committee, to wit: the Chicago, Peoria & St. Louis Railroad Company of Illinois; your petitioner further respectfully shows that in and by said decree of February 1, 1896, it was provided that the said Chicago, Peoria & St. Louis Railroad Company of Illinois, shall be substituted in place of said reorganization committee as a party to this cause, and shall have the right to appear herein and to procure and defend such proceedings as it may be advised for the protection of its interests; and shall have all the other rights and privileges to which, under said decree of foreclosure and the order confirming the sale thereunder, the purchaser at such sale is entitled.

Your petitioner further respectfully represents unto this court, that on the 5th day of April, 1897, a final decree was entered in the

above-entitled cause, directing C. H. Bosworth, receiver, to pay to said intervening petitioner the sum of $9,033.73; and this petitioner further represents unto this court that it has assigned errors, which it charges were made by this court against it in the matter of said intervening petitions, particularly specifying the errors complained of, and now here presents said assignment of errors to be filed with the clerk of this court; and

Thereupon, this petitioner prays that it may be made a party to said intervening petition, and that this court will grant to it an appeal from said final decree; and that the amount of bond and the time within which such bond and certificate of evidence shall be filed may be fixed by this court.

CHICAGO, PEORIA & ST. LOUIS RAILROAD COMPANY OF ILLINOIS,
By BLUFORD WILSON, *Its Solicitor.*

352 *Assignment of Errors by the C., P. & St. L. R'y Co.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA AND ST. LOUIS RAILWAY Company. } Consolidated Cause.

In the matter of the intervening petition of the Chicago, Milwaukee and St. Paul Railway Company.

Assignment of Errors.

And now comes the Chicago, Peoria and St. Louis Railroad Company of Illinois, by Bluford Wilson and P. B. Warren, its solicitors, and says there is manifest error in the record and proceedings in the above-entitled judgment and decree; and specifies the following, to wit:

1. The court erred in overruling the exceptions filed by the receiver to the report of the master.

2. The court erred in failing and refusing to sustain the exceptions filed by the receiver to the report of the master.

3. The court erred in ordering and adjudging that the petitioner was entitled to a valid and first lien on the property of the defendant railway company ahead of the mortgage indebtedness, and upon all of the property and income of the purchasers purchased at the foreclosure sale of said railway property.

4. The court erred in failing and refusing to order, adjudge and decree, that the claim of the *inventor* was not entitled to a valid and first lien on the property of the defendant railway company ahead of the mortgage indebtedness, and upon all of the property and income of the purchasers, purchased at the foreclosure sale of said railway property.

5. The court erred in ordering, adjudging and decreeing that said receiver pay to the intervening petitioner the sum of $9,033.73, with interest thereon from the date of the filing of the master's report, together with the costs in this case.

6. The court erred in ordering, adjudging and decreeing that if said amount was not paid by the receiver, within the time there limited, the said receiver be directed to take possession of all of said property and operate the same, and out of the net earnings pay said amount.

Whereby, the plaintiff in error prays that said judgment and decree be reversed and annulled, with directions to the lower court to dismiss said intervening petition.

BLUFORD WILSON,
PHILIP BARTON WARREN,
Solicitors for Chicago, Peoria and St. Louis Railroad Company of Illinois.

353 *Bond on Appeal of the C., P. & St. L. R'y Co.*

In the Circuit Court of the United States for Southern District of Illinois.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY Company. } Consolidated Cause.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

Bond.

Know all men by these presents, that we, The Chicago, Peoria & St. Louis Railroad Company of Illinois, as principal, and Bluford Wilson as surety are held and firmly bound unto the said Chicago, Milwaukee & St. Paul Railway Company, in the penal sum of five hundred dollars, for the payment of which, well and truly to be made, the said Chicago, Peoria & St. Louis Railroad Company of Illinois as such binds itself and its successor, and the said surety binds himself, his heirs, and personal representatives, jointly and severally by these presents.

Dated this 17th day of July, 1897.

The condition of this obligation is such that whereas, on the 5th day of April, 1897, in the circuit court of the United States for the southern district of Illinois, in the above-entitled cause, it was ordered, adjudged and decreed by the court that the above-bounden Chicago, Peoria & St. Louis Railroad Company of Illinois should pay over to the said Chicago, Milwaukee & St. Paul Railway Company the sum of $9,033.73, and from which decree the said Chicago, Peoria & St. Louis Railroad Company of Illinois, has appealed to the United States circuit court of appeals for the seventh circuit, and upon the condition that the Chicago, Peoria & St. Louis Railroad

Company of Illinois should enter into bond in the sum of five hundred dollars, with surety approved by the court:

Now therefore, if the said Chicago, Peoria & St. Louis Railroad Company of Illinois shall well and truly, without delay, prosecute the said appeal with effect, and shall pay all costs and damages that may be adjudged against it by reason of said appeal, and all costs that may accrue therein in case of dismissal of said appeal by appellant, then this obligation to be null and void, otherwise to remain in full force and effect.

CHICAGO, PEORIA & ST. LOUIS RAILROAD COMPANY OF ILLINOIS,
By F. W. HUIDEKOPER, *Pres't.* [SEAL.]
BLUFORD WILSON. [SEAL.]

Attest: CHAS. D. MEYER, *Secretary.* [SEAL.]

Approved:
WILLIAM J. ALLEN,
United States District Judge.

354–391 *Order Making C., P. & St. L. R'y Co. Party Defendant, Allowing Appeal, and Approving Bond.*

In the Circuit Court of the United States, Southern District of Illinois.

MERCANTILE TRUST COMPANY ET AL.
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY *et al.* } Consolidated Cause.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

Order of Court Making The Chicago, Peoria & St. Louis Railroad Company of Illinois Party Defendant and Granting Leave to Appeal from Final Decree.

This cause coming on to be further heard upon the application of the Chicago, Peoria & St. Louis Railroad Company of Illinois to be made a party defendant to the above-entitled intervening petition, and for leave to appeal from the decree entered in this cause on the 5th day of April, 1897, and the court being fully advised in the premises, upon consideration thereof, does hereby grant leave unto said Chicago, Peoria & St. Louis Railroad Company of Illinois to be made party defendant to said intervening petition; and does also hereby grant unto said Chicago, Peoria & St. Louis Railroad Company of Illinois an appeal from said final decree of this court to the circuit court of appeals of the United States for the seventh circuit, upon the said Chicago, Peoria & St. Louis Railroad Company of Illinois entering into bond in the sum of five hundred dollars ($500.00) with approved surety.

* * * * * * *

392–397 And afterwards, on the same day, to wit: on the twenty-fifth day of February, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

FRIDAY, *February* 25, 1898.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY ET AL.

In the Matter of the Intervening Petition of Chicago, Milwaukee & St. Paul Railway Company. } 442.

C. H. BOSWORTH, Receiver, etc.,
vs.
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY.

Appeal from the circuit court of the United States for the southern district of Illinois.

Decree. Entered Feb. 25, 1898.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Illinois and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed, by this court, that the decree of the said circuit court, in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is, hereby remanded to the said circuit court with directions to dismiss the petition.

* * * * * * *

398 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the seventh circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which C. H. Bosworth, as receiver of the Chicago, Peoria & St. Louis Railway Company, and The Chicago, Peoria & St. Louis Railway Company are appellants and The Chicago, Milwaukee & St. Paul Railway Company is appellee, No. 442, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into
399 the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court,

as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the tenth day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

400 UNITED STATES OF AMERICA, *Seventh Circuit,* } ss:

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full and true copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of C. H. Bosworth, receiver of the Chicago, Peoria & St. Louis Railway Company, and The Chicago, Peoria & St. Louis Railway Company, appellants, and The Chicago, Milwaukee and St. Paul Railway Company, appellee, is a full, true, and complete transcript of the record upon which said cause was heard in the United States circuit court of appeals for the seventh circuit, together with all proceedings in said court.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this 18th day of May, A. D. 1898.

OLIVER T. MORTON,
Clerk United States Circuit Court of Appeals for the Seventh Circuit.

401 In the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1897.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY ET AL.

In the matter of the intervening petition of the Chicago, Milwaukee & St. Paul Railway Company.

C. H. BOSWORTH, Receiver, etc., Appellant,
vs.
THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Appellee.

It is stipulated by and between the parties hereto, by their respective counsel, that the certified copy of the transcript of record filed by the clerk of this court in the Supreme Court of the United States in the application there made for a writ of certiorari in the

above-entitled cause, there entitled The Chicago, Milwaukee & St. Paul Railway Company *vs.* C. H. Bosworth, receiver, &c., No. 643, all to the October term, 1897, of said court, shall be taken as the return to said writ of certiorari granted by said Supreme Court in said cause on the 10th day of May, A. D. 1898.

Dated May 16, 1898.

GEO. R. PECK,
BURTON HANSON,
Solicitors for Chicago, Milwaukee & St. Paul Railway Company.
BLUFORD WILSON,
PHILIP BARTON WARREN,
Solicitors for C. H. Bosworth, Receiver.

(Endorsed:) United States circuit court of appeals, seventh circuit. Mercantile Trust Company *vs.* Chicago, Peoria & St. Louis Railway Company. In the matter of the intervening petition of Chicago, Milwaukee & St. Paul Railway Company. C. H. Bosworth, receiver, etc., *vs.* The Chicago, Milwaukee and St. Paul Railway Company, appellee. Stipulation. Filed May 18, 1898. Oliver T. Morton, clerk.

402 [Endorsed:] Case No. 16,856. Supreme Court of the United States. No. 283, October term, 1898. The Chicago, Milwaukee & St. Paul R'y Co. *vs.* C. H. Bosworth, rec'r, &c. Writ of certiorari and return. Filed May 18, 1898. Oliver T. Morton, clerk. Office Supreme Court U. S. Filed May 26, 1898. James H. McKenney, clerk.

403 In the Supreme Court of the United States, October Term, A. D. 1898.

MERCANTILE TRUST COMPANY
vs.
CHICAGO, PEORIA & ST. LOUIS RAILWAY COMPANY ET AL. } No. 283.

In the matter of the intervening petition of the Chicago, Milwaukee, & St. Paul Railway Company.

THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, Petitioner,
vs.
C. H. BOSWORTH, Receiver of the Chicago, Peoria & St. Louis Railway Company, Respondent.

Stipulation for Printing Portions of the Record.

Whereas certain portions of the transcript of record in the above-entitled cause and the cause entitled Jacob Rau, petitioner, *vs.* C. H. Bosworth, receiver of the Chicago, Peoria & St. Louis Railway Company, respondent, No. 285, October term, A. D. 1898, of this court, such as the amended intervening petition, the answer thereto, as well as the answer to the original intervening petitions, the entire

evidence taken, the opinion of the judges of the circuit court of appeals, as well as various other matters, rulings, proceedings, and doings, are in all respects identical:

Now, therefore, for the purpose of saving to the parties the expense of printing the entire transcript of record in the above-entitled cause, it is stipulated and agreed that the entire transcript of record in the aforesaid Rau case shall be printed, and that only the following portions of the transcript of record in the above-entitled cause shall be printed, to wit:

404 1. Intervening petition, found on page 23 and succeeding pages of the transcript of record, and proceedings in United States circuit court of appeals for the seventh circuit, filed in the above-entitled cause in this court, in the matter of the application for a writ of certiorari.

2. Report of master, found on pages 59 and 60 of said transcript of record.

3. Exhibit to said master's report, entitled T. McMichael & Son report, found on page 60 and succeeding pages of the transcript of record in the aforesaid Rau case.

4. Exceptions to master's report, found on page 61 and succeeding pages of said transcript of record.

5. Decree, found on pages 63 and 64 of said transcript of record.

7. Petition for appeal, found on page 347 of said transcript of record.

8. Assignment of errors by receiver, found on page 348 of said transcript of record.

8½. Appeal bond of said receiver, found on page 349 of said transcript of record.

9. Order allowing receiver's appeal, found on page 350 of transcript of record.

10. Petition of Chicago, Peoria & St. Louis Railway Company to be made a party and for leave to appeal, found on pages 350 and 351 of said transcript of record.

11. Assignment of errors by said railroad company, found on page 352 of said transcript of record.

12. Appeal bond of said railway company, found on page 353 of said transcript of record.

13. Order making said railway company party and granting appeal, found on page 354 of said transcript of record.

14. Decree of United States circuit court of appeals, found on page 395 of said transcript of record.

It is further stipulated and agreed that this cause shall be heard and considered by this court upon the transcript of record in
405 the aforesaid Rau case, No. 285, October term, 1898, of this court, in connection with such portions of the transcript of record in the above-entitled cause as shall be printed under this stipulation, and that the amended intervening petition, the answer thereto, as well as the answer to the original intervening petition, the entire evidence taken, the opinions of the judges of the circuit court of appeals, as well as various other matters, rulings, proceedings, and doings as contained and found in the transcript of record in the

aforesaid Rau case, shall for all purposes be treated and considered the same as if they had been printed and included within the printed transcript of record in the above-entitled cause.

Dated July 14th, 1898.

GEORGE R. PECK,
BURTON HANSON,
Counsel for Petitioner.
BLUFORD WILSON,
P. B. WARREN,
Counsel for Respondent.

406 [Endorsed:] Case No. 16,856. Supreme Court U. S., October term, 1898. Term No., 283. The Chicago, Milwaukee & St. Paul R'y Co., petitioner, *vs.* C. H. Bosworth, rec'r, &c., *et al.* Stipulation to omit parts of record in printing. Filed July 23, 1898.

Endorsed on cover: Case No. 16,856. U. S. C. C. of appeals, 7th circuit. Term No., 283. The Chicago, Milwaukee & St. Paul Railway Company, petitioner, *vs.* C. H. Bosworth, receiver of the Chicago, Peoria & St. Louis Railway Company, and The Chicago, Peoria & St. Louis Railway Co. Filed April 26, 1898.